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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,149	06/01/2000	Timothy M. Schweikert	8617-81	5243

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EXAMINER

PATEL, VINOD D

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/585,149

Applicant(s)

SCHWEIKERT ET AL.

Examiner

VINOD D. PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 24-30 and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-30 and 36-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED OFFICE ACTION

### INTRODUCTION

1. This application/control number 09/585,149 has been examined. This is final action on the merits of the claimed invention. The application has claims 24-30 and 36-42 pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 36-42, 24-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Palestrant (US5807311).

Palestrant discloses (Fig. 1-8) a multi lumen catheter assembly (10) comprising all claimed limitations including a first lumen (12) extending between a first distal end (14) and proximal end (16) and a second lumen (18) extending between a first distal end (20) and a proximal end (22), the first lumen (12) and the second lumen (18) are joined at contact point (19) and both lumens can be extruded concurrently and both lumens can be made from same material, second ends (16) and (22) of first and second lumens (12) and (18) are secured to a Y-hub or connector hub (24), extending from connector hub are first connector tube (26) and a second connector tube (28), connector hub (24) couples first connector tube (26) to second end (16) of first lumen (12) and second

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connector tube (28) to the second end (22) of the second lumen (18), pair of clamps (32) and (34) for selectively closing off such connector tubes before and after use, as shown in Fig. 1-8 the first and second distal end tubes are generally circular in transverse cross section, as shown in Fig. 3A and 3B lumen has a **generally cylindrical shape, this term is intended to include circular cross-section as well as oval elliptical cross-sections.**

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palestrant (US5807311) in view of Pourchez (US6001079).

Claim differs from Palestrant in calling for a plurality of holes formed through each of the first and second distal end tubes.

Pourchez discloses a dual lumen catheter (1) comprising a distal end (5) having a plurality of holes (7, 8) to deliver and/or sample fluid (4) to or from a patient's body.

In view of Pourchez, it would have been obvious to one of ordinary skill in the art to provide a plurality of holes to the device of Palestrant to deliver and or/sample fluid to or from a patient's body.

***Response to Arguments***

6. Applicant's arguments filed 4-21-03 have been fully considered but they are not persuasive. Applicant argues that "The novel feature of the generally oval shape cross section of the catheter assembly recited in new claim 36, and shown in Fig. 2 of the instant application is neither disclosed nor suggested by Palestrant."

This is incorrect, since Column 6, line 35-38, "**As used herein, the term "generally-cylindrical" is intended to include circular cross-sections as well as oval and elliptical cross-sections.**" of the applied reference U. S. Patent No. 5, 807, 311 includes claimed feature.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VINOD D. PATEL whose telephone number is 703-308-5227. The examiner can normally be reached at 6.30 A.M. TO 4.00 P.M. If attempts to

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reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached at 703-308-1327. The fax phone numbers for the organization where this application or proceeding is 703-872-9302. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

VP  
May 2, 2003

  
Teresa Walberg  
Supervisory Patent Examiner  
Group 3700